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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/693,087

10/23/2003

David M. Stravitz

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05/18/2006

FRISHAUF, HOLTZ, GOODMAN & CHICK, PC

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EXAMINER

PARADISO, JOHN ROGER

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/693,087

Applicant(s)

STRAVITZ, DAVID M.

Examiner

John R. Paradiso

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-26 and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over RICHARDS ET AL in view of DEMMING ET AL, as set forth in paragraph 3 of the previous Office Action.

### ***Response to Arguments***

3. Applicant's arguments filed 2/28/2006 have been fully considered but they are not persuasive.
4. Applicant states on page 13 of his Response that "one skilled in the art would not consider applying any teaching of Demming et al. in combination with Richards et al., because one skilled in the packaging art would not consider Demming et al. to be either analogous art or in the same field of endeavor as Richards et al." Applicant continues on page 14 of this Response that "There are thus substantial differences in both the apparatus and the manner in which a length of flexible tubing is used in Demming et al. and Richards et al. which result in Demming et al. being non-analogous art.."

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However, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both inventions face the problem of providing a secure, leakproof closure to tubing and Examiner maintains that "It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of RICHARDS ET AL by closing the first end of the tubing to form a space within which the material can be placed, as taught by DEMMING ET AL, in order to provide a secure, leakproof closure appropriate to the type of material being contained within the packaging."

Examiner also notes that while Applicant believes "There are thus substantial differences in both the apparatus and the manner in which a length of flexible tubing is used in Demming et al. and Richards et al.", the claims in the instant invention are directed to an apparatus, not a method.

5. Applicant states on page 15 of his Response that "there is no objective teaching in the cited prior art to close the first portion of the tubing in the Richards et al. cartridge and there is also no knowledge generally available to one skilled in the art which would lead an individual to close the first end portion of the tubing."

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However, RICHARDS ET AL discloses the forward end of the tubing to be tied or twisted (otherwise the waste product would fall out) and DEMMING ET AL discloses the use of a metal clip to close the forward end of a tube. Examiner maintains that "It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of RICHARDS ET AL by closing the first end of the tubing to form a space within which the material can be placed, as taught by DEMMING ET AL, in order to provide a secure, leakproof closure appropriate to the type of material being contained within the packaging."

6. Applicant states on page 17 of his Response that "Although Demming et al. shows use of a closure clip to close an end of tubing, the absence of a cartridge for housing the tubing in Demming et al. precludes a finding of an objective teaching in Demming et al to close of [sic] an end of tubing arranged in a cartridge using such a closure clip."

However, Examiner explained that the teaching of DEMMING ET AL to use a clip of deformed metal to close the end of a tube was used to modify the invention of RICHARDS ET AL. If Applicant's argument were taken, then the teaching reference would require all the specifics of the principal reference; but if this were true, the teaching reference would not be needed.

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7. Applicant states on page 18 of his Response that “Failing to recognize any disadvantage or drawback of the manually tying of the front end portion of tubing in a cartridge to begin its use in a waste disposal device, one skilled in the art would not have sought knowledge of alternative techniques to close the front end portion of the tubing. Thus, one skilled in the art would not have been in possession of knowledge which would have led them to combine the use of a closure clip, such as shown in Demming et al. ...”.

However, the fact that a prior art reference does not contain a teaching does not mean, as Applicant appears to imply, that one of ordinary skill in the art would never have knowledge of any teaching to modify the original reference. Examiner maintains that “It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of RICHARDS ET AL by closing the first end of the tubing to form a space within which the material can be placed, as taught by DEMMING ET AL, in order to provide a secure, leakproof closure appropriate to the type of material being contained within the packaging.”

8. Applicant states on page 20 of his Response that “The Examiner therefore takes a position that ‘lines of weakness are being read as the seams in that cartridge’, i.e., the Richards et al. cartridge (Office Action at page 4). It is respectfully submitted that whatever seams are found in the cartridge in Richards et al., the seams are not linear and do not separate cover into approximately equal parts.”

However, Examiner disagrees and read the seams in the cartridge of RICHARDS ET AL as being exactly that: linear and separating the cover into equal parts.

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9. Applicant states on page 21 of his Response that “A cartridge in which the casing and cover are made of different materials, with the cover being made of cardboard, is not taught or suggested by Richards et al. Richards et al. Does not provide any suggestion or motivation to make the ring 72 of a different material than the core 1, namely cardboard, to facilitate its bending, and indeed does not even contemplate bending of the cover after the tubing is exhausted.”

However, claim 19 does not recite any functional language, merely structure. Examiner maintains that for the cartridge of RICHARDS ET AL, which by it's nature and function must be tough enough to handle a large amount of use and thus can be defined as fibrous, it would be obvious to form it of cardboard.

10. Applicant states on page 23 of his Response that “the claimed embodiments of the invention and Richards et al. do not include ‘rolls of plastic bags’, for which the obviousness of including lines of separation or depressions to enable individual separation of the bags from the roll is asserted.”

However, Examiner explained in the previous Office Action that “the use of lines of separation to demark the separation points for rolls of plastic bags is well known in the art and it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bags of RICHARDS ET AL by forming lines of separation on them in order to allow a consumer to use less than an entire cartridge full, as desired. The claimed “lines of depression” are read as a type of these lines of separation.”

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The use of lines of separation in rolls of bags was described because of its ubiquitous nature and ease of relating, not because that is the only environment in which lines of separation are found or useful. In fact, the use of lines of separation would be useful in the combination of RICHARDS ET AL and DEMMING ET AL for the same reasons.

Examiner lastly notes that Official Notice was given in the previous Office Action that the use of lines of separation to demark the separation points for rolls of plastic bags is well known in the art. Since Applicant has not argued this point, it will henceforth be referred to as admitted prior art.

11. Applicant states on page 24 of his Response that “Richards et al. does not disclose a cartridge having a casing with an outer wall and a flange extending outward from the outer wall and which serves to enable attachment of a cover thereto.”

However, Figure 6 of RICHARDS ET AL clearly show this feature.

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**



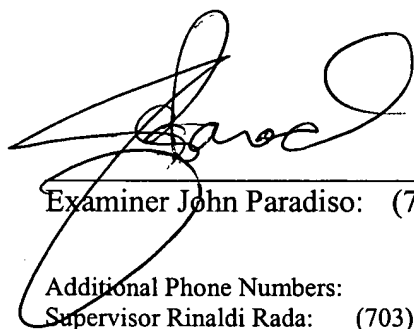
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Paradiso. The examiner can normally be reached Monday-Friday, 9:30 p.m. – 6:00 p.m. (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada, can be reached at the number listed below.

Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Technology Center Receptionist.



Examiner John Paradiso: (703) 308-2825

Additional Phone Numbers:

Supervisor Rinaldi Rada: (703) 308-2187

Fax (directly to Examiner) (703) 746-3253

Fax (Official): (571) 273-8300



Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700

May 10, 2006